National Association of Letters Carriers, Branch 86, AFL–CIO (United States Postal Service) *and* Michael Davis. Case 34–CB–1477(P)

December 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

On January 8, 1993, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

1. The Respondent represents the letter carriers at the United States Postal Service's (the Employer) Murphy Road facility in Hartford, Connecticut. The facility is split into three discrete zones which have separate seniority lists for full-time regular (FTR) employees. These lists control bidding on routes, overtime, other work assignments, and vacations.

Michael Davis is a part-time flexible (PTF) employee. PTF employees are guaranteed only 4 hours of work per pay period but many work at least 56 hours a week. Davis is a member of the Respondent but he has been critical of it. He placed an article in the Respondent's June/July 1990 newsletter complaining that the Respondent failed to represent PTF employees fairly, given that they paid the same dues to the Respondent as the FTR employees.[2]

Davis normally worked the day shift from 7:30 a.m. to 4 p.m. By the end of 1990, Davis had averaged 40 hours or more weekly for a 6-month period.[3] However, during the first 3 months of 1991,[4] Davis noticed that he was not being assigned his customary overtime hours. At this time, Davis complained to Chuck Corso and Mike Bedard, the Respondent's two stewards for his shift and zone. In April, Davis also sought permission from his supervisors to work on his off day, Tuesday, in order to accumulate overtime hours. Subsequently, the Employer scheduled Davis for work every Tuesday.

On April 23, Davis informed Corso and Bedard that he was working on Tuesdays and that ''[he] thought [he] could do better on [his] own than with the union and [he was] thinking about getting out of the union.'' Bedard referred Davis to a bulletin board posting about scabs and said Davis would be a scab ''if [Davis] were to get out of the union.'' Davis repeated that he thought he would get out of the Union since he was a PTF employee, and maybe when he became a FTR employee he would think about rejoining the Union. Bedard responded by saying he had no respect for those who did this. Bedard then said that he would tell Davis' supervisor that Davis ''[took his] breaks at the end of the day, not when [he was] supposed to.'' Davis responded by saying that ''[he was] going to get out of the union, and [he would] take care of [himself].'' Corso was present during this exchange.

The judge found that Bedard's threat about Davis' breaks did not violate the Act. He noted that the Respondent, as the employee representative, consistently maintained the position that employees must take their breaks as scheduled and that the Respondent neither did nor could threaten employer disciplinary action based on this issue. We disagree. We find that Bedard's threat about Davis' breaks would tend to restrain and coerce employees in the exercise of their right to resign from the Union.

It is clear that Steward Bedard's remarks were a response to Davis' stated contemplation of leaving the Union. Davis told the Respondent's stewards that he planned to relinquish his membership in the Respondent. Steward Bedard responded by implying that Davis

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The article stated:

> The Union would be smart to remind themselves of simple equality and simple respect. Same union. Same job. Same Union deduction. Same respect. I am a PTF and I belong to the Union. I pay the same dues a regular carrier pays. The regular carrier gets protection which is in the contract. The PTF gets a $12.00 deduction every pay period. Many regulars do understand the PTF's problems. They give some good advice, but only off the record. One of the problems is with seniority. Seniority is good. Seniority helps keep a supervisor honest. It keeps them from favoring one carrier over another. But this, seemingly, is only for regular carriers. This should also be for PTFs and should be in the contract, and not just left up in the air so a supervisor uses it when he or she feels like it. Another problem is respect. A new employee should start from the bottom, that's only fair. But respect should be given as they are still human beings. What is wrong with a supervisor letting a PTF know a day ahead of time if he or she has a collection, a long day, a short day? If this were done, the PTF could have some way to arrange their personal lives. Many times a supervisor knows what a PTF is working the next day, but doesn't tell the PTF because he doesn't have to. PTFs and Regular carriers are no different except for the way they are treated by the Post Office and the Union. PTFs need to respect the Union and the Union must respect us and get PTFs some rights.

[3] The Respondent contacted Davis in order to use his name and work hours in a grievance. Under the applicable contract, the senior PTF employee (Davis was not in this position) might be promoted to an FTR employee when he worked the hours Davis was working for extended periods. The Respondent filed a grievance on this issue.

[4] All dates are in 1991 unless otherwise indicated.

was a ''scab,'' a term of opprobrium, and by saying that he would lose respect for Davis if he left the Union. Steward Bedard then said that he would tell the Employer that Davis did not take his breaks at the scheduled times. This immediate sequence of events—Davis' threat to resign from the Union and the Union's prompt statement that it would report Davis' break conduct—take this conduct well beyond the Union's mere expression of a consistent position on breaks, as found by the judge. Contrary to the judge, the Respondent's threat cannot be deemed noncoercive merely because the Respondent had previously agreed with the Employer that employees must take breaks at the designated times. Regardless of the Respondent's general position on breaks, an individual employee could reasonably fear that the Employer, armed with particular information about the individual that it would not have but for the Respondent's action, might take disciplinary measures. Further, an employee could reasonably believe that the Employer would act with respect to conduct to which it might otherwise turn a blind eye if the conduct were officially brought to its attention by the bargaining representative. True, the Respondent itself could not impose Employer discipline for breaks not taken at the correct time. However, the Respondent's threat to bring the information to the attention of the party that could impose discipline is coercive. In these circumstances, the Respondent's threat to Davis, in response to Davis' statement about resignation, would tend to chill him in the exercise of his statutory right to resign from the Union. This threat violates Section 8(b)(1)(A) of the Act. See, generally, *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

2. The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by threatening Davis with the loss of his overtime work and requesting the Employer to stop scheduling Davis for overtime work. We agree. The judge also found that the Respondent violated Section 8(b)(2) of the Act by causing the Employer to stop scheduling Davis for overtime work. The judge's theory was that the Respondent's conduct in this respect violated its duty of fair representation. In its exceptions, the Respondent argues that this theory of violation was neither alleged in the complaint nor litigated at the hearing. We agree with the Respondent. We nonetheless reach the same result as the judge. We note that the General Counsel alleged a *Wright Line*[5] theory in the complaint[6] and that the judge's findings satisfy the analytical objectives of *Wright Line*.[7] As detailed below, the judge found that the Respondent's conduct was prompted by animus toward Davis arising from Davis' contemplated exercise of his Section 7 right and that the Respondent's defense was ''pretextual.'' The General Counsel alleges that Davis' stated intention to withdraw from the Respondent was a motivating factor in the Respondent's request to the Employer to curtail Davis' overtime work. The Respondent asserts that it merely sought to ensure that the Employer abided by applicable rules regarding overtime.

As discussed in section 1, supra, Michael Davis engaged in protected activity on April 23, when he announced his intention to withdraw from the Respondent. On that date the Respondent, as we have found, unlawfully threatened to tell the Employer that Davis did not take his breaks at the prescribed times, in violation of Section 8(b)(1)(A) and thus displayed its animus toward Davis' protected activity. Thereafter, Davis and Steward Chuck Corso were involved in a series of incidents which reflected a growing animosity between the two men. In a conversation with employee Sylvie Gervais, that was relayed to Davis by Gervais, Corso said he would ''get [Davis'] ass'' if Davis mistakenly used his jeep, unlike his reaction to another employee's use of the jeep. Corso then complained to

[5] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[6] The complaint states the following:

9. On or about May 16 and 20, 1991, Respondent, by Chuck Corso, requested that the Employer discipline its employee Michael Davis.

10. On or about May 30, 1991, Respondent, by Thomas Cronin, requested that the Employer cease providing overtime work to Michael Davis.

11(a) By the acts and conduct described above in paragraphs 9 and 10, Respondent attempted to cause the Employer to discipline Davis and to cease providing Davis with overtime work.

(b) By the acts and conduct described above in paragraph 10, Respondent caused the Employer to cease providing overtime work to Michael Davis.

12. Respondent engaged in the conduct described above in paragraphs 9, 10 and 11 because Davis indicated his intention to withdraw from membership in Respondent.

13. By the acts and conduct described above in paragraphs 9, 10, 11 and 12, and by each of said acts, Respondent has caused and attempted to cause, and is causing and attempting to cause, an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

14. By the acts and conduct described above in paragraphs 6, 7, 8, 9, 10, 11 and 12, and by each of said acts, Respondent has restrained and coerced, and is retraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

[7] The Board has previously applied *Wright Line* to conduct alleging violations of Section 8(b)(1)(A) and (2) of the Act, as alleged here with respect to the Respondent's conduct concerning Michael Davis' overtime. At issue is motivation: a union is alleged to have restrained and coerced an employee and caused the employer to discriminate against the employee for reasons condemned by the Act; the union asserts it acted for legitimate reasons. See *Teamsters Local 287 (Consolidated Freightways)*, 300 NLRB 539, 548 fn. 20 (1990), and cases cited there.

the Employer's supervisors about Davis drawing ''happy faces'' on forms and about Davis' inadequate ''casing''[8] of Corso's route.[9] Finally, on May 27 or 28, Davis was ''casing'' Corso's route which that day included samples of the cereal ''Cheerios.'' Davis wrote addresses for the deliveries on a slip of paper and concluded by repeating ''Cheerios'' three times. When Corso saw this, he told Davis that Davis was just trying ''to aggravate'' him. Corso then said that ''[he] wasn't going to do anything before, but because of these Cheerios, Cheerios, Cheerios, [he was] going to put an end to [Davis'] overtime on Tuesdays.'' Corso then reported to Steward Tom Cronin that Davis was working overtime and asked Cronin to check into it. Cronin told Superintendent Robert Pilkington that the Respondent would file a grievance over Davis' overtime. Subsequently, Pilkington informed Davis that he would no longer be working overtime.

The evidence thus shows that the personal animosity between Corso and Davis and the animosity toward Davis' protected activity became inextricably intertwined.[10] The Respondent's April threat unequivocally displayed its animus toward Davis' protected activity. Only a month later, the Respondent again threatened Davis. Despite the passage of time and the intervening clashes between Corso and Davis, the totality of the circumstances warrant an inference that the Respondent's motivation was unlawful in May just as it was in April. The General Counsel thereby made a prima facie showing that Davis' protected conduct was a motivating factor in the Respondent's request to the Employer to cease scheduling Davis for overtime.[11] Moreover, in this context, Corso's statement to Davis that ''[he was] going to put an end to [Davis'] overtime on Tuesdays'' was coercive and in violation of Section 8(b)(1)(A) of the Act. The judge so found and we agree.

Finally, like the judge, we find that the Respondent failed to demonstrate that it would have taken the same actions against Davis and his overtime even in the absence of his protected activity. The judge found that the Respondent's explanations were pretextual.[12] We agree. The Respondent did not complain about Davis' performing the overtime prior to the end of May even though Davis had been performing this work for about a month. Moreover, the Respondent asserted that it merely sought to require that the Employer abide by applicable rules. Yet those rules applied to FTR employees rather than PTF employees like Davis. Further, despite the Respondent's contentions, no documentary evidence was produced to support the existence of the alleged agreement to maximize the hours of FTR employees before the Employer used PTF employees. Indeed, the documentary evidence showed that the Employer could use PTF employees, like Davis, just as it had.[13]

We find that this analysis of the judge clearly satisfies the analytical test of *Wright Line*, supra, and establishes the 8(b)(1)(A) and (2) violations. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

ORDER

The National Labor Relations Board orders that the Respondent, National Association of Letter Carriers, Branch 86, AFL–CIO, Hartford, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening a bargaining unit employee that it will inform the Employer that the employee does not take required breaks as scheduled, because of the employee's protected activity.

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[8] The term ''casing'' refers to the preparation of mail for delivery by a letter carrier.

[9] We agree with the judge's dismissal of the allegation that these incidents, in which Corso complained to supervisors, violated the Act. Like the judge, we are satisfied that they would have occurred even without Davis' protected activity in April. In the ''happy faces'' incident, Corso was merely expressing the Union's legitimate interest in having forms, which were used for grievance processing, free from unwanted embellishments. In the initial route ''casing'' incidents, the weight of the evidence negated any showing of discriminatory motivation. Corso had a long history of complaining about the inadequate casing of his route. He had even filed a successful grievance about it only a few months earlier. Thus his complaints about Davis' poor casing of his route were simply consistent with his past practice.

[10] The judge found, and we agree, that Corso acted to have the Union demand that Davis' overtime be ended because of Corso's ''animosity'' toward Davis. Significantly, that animosity began with the April 23 incident in which the Respondent, through Steward Bedard in the presence of Steward Corso, expressed animus toward and unlawfully threatened Davis. Though Corso's animosity subsequently escalated because of his personal disputes with Davis, we view Corso's animosity, in the absence of a contrary showing not provided here by the Respondent, as based on Corso's animus toward Davis' protected activity.

[11] We find a nexus between the Respondent's actions and the protected activity. The May events (the Respondent's request to the Employer to cease scheduling Davis for overtime) had their genesis in the April events (the Respondent's threat to tell the Employer that Davis failed to take breaks at the prescribed time). Thus the lapse of 1 month is without significance.

[12] A pretextual defense supports an inference of unlawful motive. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

[13] The Respondent's own newsletter noted that the overtime lists for each of the zones applied only to FTR employees and not PTF employees and that PTF employees might be used in lieu of FTR employees to work any overtime anytime. The Respondent and the Employer jointly acknowledged that:

> The Overtime Desired Lists control the distribution of overtime only among full-time regular letter carriers. Management may assign overtime to a PTFS or casual employees rather than to full-time regular employees who are either signed up for ''work assignment'' overtime or OTDL.

The Respondent acknowledged that the Employer saved money by using PTF employees rather FTR employees in this manner.

(b) Threatening a bargaining unit employee with loss of overtime work because of the employee's protected concerted activity.

(c) Demanding that the Employer take away an employee's overtime work, thereby causing the employee to lose the overtime work, because of the employee's protected activity.

(d) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Michael Davis whole for any losses he may have suffered by virtue of the Respondent's unlawful actions against him, in the manner set forth in the remedy section of the judge's decision.

(b) Post at its office and meeting place and at the U.S. Postal Service Murphy Road Facility in Hartford, Connecticut, on bulletin boards furnished for the Respondent's use, copies of the attached notice marked ''Appendix,''[14] on forms provided by the Regional Director for Region 34. After being signed by Respondent's authorized representative, the notice shall be posted for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten a bargaining unit employee with informing the Employer that the employee does not take his breaks as scheduled and with loss of overtime work, because of the employee's protected activity.

WE WILL NOT demand that the Employer discriminate against an employee by taking away the employee's overtime work, thereby causing the employee to lose the overtime work, because of the employee's protected activity.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Michael Davis whole for any losses he may have suffered by virtue of our actions against him, with interest.

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 86, AFL–CIO

Thomas E. Quiqley, Esq., for the General Counsel.
Michelle Dunham Guerra, Esq., of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On May 29, 1991,[1] Michael Davis, an individual, filed a charge alleging that the National Association of Letter Carriers, Branch 86, AFL–CIO (Union or Respondent) had violated Section 8(b)(1)(A) of the National Labor Relations Act (Act). The charge was amended on June 20 to include an alleged violation of Section 8(b)(2) of the Act. The Regional Director for Region 34 issued complaint and notice of hearing on July 26, and Respondent filed a timely answer admitting, inter alia, the jurisdictional allegations of the complaint, but denying the commission of any unfair labor practices.

Hearing was held in these matters in Hartford, Connecticut, on August 3 and 4, 1992. Briefs were received from the parties on or about September 17, 1992. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It was admitted and I find that the United States Postal Service is now, and has been at all times material to this proceeding, an employer and subject to the Board's jurisdiction pursuant to Section 1209 of the Postal Reorganization Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted and I find that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues Presented for Determination*

Michael Davis has worked at the Employer's Murphy Road facility in Hartford, Connecticut, for over 3 years. This facility encompasses three separate stations or zones within

[1] All dates are in 1991 unless otherwise noted.

one building: Wethersfield, Barry Square and Station A. Davis works as a ''part-time flexible'' employee (PTF) and has worked in all three zones. Davis works primarily out of the Wethersfield zone, and has always been a PTF during his employment career with the Postal Service. For the past two years, Davis has been supervised by David Cattanach, who has been the Delivery and Collection Supervisor for the Wethersfield zone for the past 3 or 4 years. Robert Pilkington is the overall superintendent for the Murphy Road facility, which employs about 200 postal employees.

The letter carriers at the Murphy Road facility are represented by the Union. Each of the three stations which comprise the facility has a separate seniority list which covers only those carriers who work in that station. The list is used for bidding on permanent routes, vacation scheduling, and bidding on duration (hold-down) assignments as well as the distribution of overtime.[2] Work assignments are made from the zone seniority list. PTFs, like Davis, are not on these lists, but are on separate PTF seniority lists.

Davis joined the Union shortly after joining the Postal Service, but has never run for or held union office. During the spring of 1991, the relevant time period in this case, the union stewards in the Wethersfield station were Charles (Chuck) Corso and Mike Bedard. Tom Cronin was the station A steward at that time. Mike Willadsen is the Union President. Corso became the Union's vice president in November.

For the past 2 years, Davis has been the sole PTF at the Wethersfield station. PTFs have no fixed schedule and are guaranteed only 4 hours a pay period. The only restriction on the maximum hours a PTF can work is that management tries to avoid working a PTF more than 56 hours in a week. PTFs are promoted to the ranks of full-time regular mail carriers under certain conditions set out in the National Agreement between the Union and the Employer. As a PTF, Davis fills in holes for the regular carriers. He ''cases'' or ''routes'' routes, sometimes delivers, and collects mail. Casing or routing a route are Postal Service terms that encompass the preparation of mail for actual delivery by a carrier. It involves sorting the mail assigned to a carrier's route in the order to be delivered. It also involves noting address changes on the carrier's route so that mail will not be misdelivered. This job was a relatively new one in the spring of 1991 and evidently subject to problems.

For reasons which will be discussed in detail, Davis threatened to withdraw from the Union in a confrontation with Stewards Corso and Bedard in April. The General Counsel asserts that this threat prompted the Union to retaliate and discriminate against Davis in a number of ways. Specifically, the complaint alleges that Respondent violated Section 8(b)(1)(a) of the Act by:

(a) On or about April 23, through Steward Bedard, threatening Davis that it would cause the Employer to discipline him because Davis refused to support the Union;

(b) Since on or about April 23, through Steward Corso, harassing Davis because he refused to support the Union;

(c) On or about May 28, through Steward Corso, threatening Davis with loss of overtime work because he refused to support the Union.

The complaint alleges that the Respondent violated Section 8(b)(2)(a) of the Act by:

(a) On or about May 16 and 20, through Steward Corso, requesting that the Employer discipline Davis;

(b) On or about May 30, through Steward Cronin, requesting that the Employer stop providing overtime work to Davis, thus attempting to cause the Employer to discipline Davis and stop providing overtime work to Davis;

(c) Causing the Employer to discriminate against Davis in violation of Section 8(a)(3) of the Act by causing the Employer to stop providing overtime work to Davis because of Davis' stated intention to Respondent that he wished to withdraw his union membership.

B. *The Legal Principles Involved*

In *Miranda Fuel Co.*, 140 NLRB 181 (1962), the Board recognized that the ''privilege of acting as an exclusive bargaining representative derives from Section 9 of the Act, and a union which would occupy this statutory status must assume the responsibility to act as a genuine representative of all the employees in the bargaining unit.'' Id. at 184. The Board cited the Supreme Court in *Wallace Corp. v. NLRB*, 323 U.S. 248, 255 (1944), for the principle that ''[by] its selection as bargaining representative, it has become the agent of all employees, charged with the responsibility of representing their interests fairly and impartially.'' *Miranda Fuel*, 140 NLRB at 184. In *Miranda Fuel*, the Board set out the broad standard to judge union action which impacts on employees' employment rights:

> Section 7 thus gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment. This right of employees is a statutory limitation on statutory bargaining representatives, and we conclude that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious or unfair.

Id. at 185.

The Board in *Miranda Fuel* also established that an employer which participates in a union's arbitrary action violates the Act. ''We further conclude that a (union) and an employer also respectively violate Section 8(b)(2) and 8(a)(3) when, for arbitrary or irrelevant reasons or on the basis of an unfair classification, the union attempts to cause or does cause an employer to derogate the status of an employee.'' Id. at 186. The Board observed that a violation turns upon the finding that the action taken encourages membership in a labor organization. The Board also noted that an ''8(a)(3) or 8(b)(2) violation does not necessarily flow from conduct which has the foreseeable result of encouraging union membership, but that given such 'foreseeable result' the finding of a violation may turn upon an evaluation of the disputed conduct 'in terms of legitimate employee or union pur-

[2] A hold-down position is one vacated by a regular employee generally because of permanent separation from the Postal Service. While the bidding process to select a permanent replacement for the position is conducted, another employee can hold down or fill the position temporarily. Such hold downs usually have a duration of 4 to 8 weeks. PTF's can bid on these positions. If a PTF gets the hold-down position, he or she works the same schedule as did the employee who vacated the position, including hours and days of work.

poses.''' 140 NLRB at 187–188. Thus, the Board established the rule that a union must have a legitimate purpose when it demands that an employer reduce an employee's work status.

The Supreme Court has also recognized that a union owes its members a duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171 (1967). The Court has also acknowledged that a union, as long as it used good faith and honesty of purpose is allowed a ''wide range of reasonableness'' in representing unit employees. *Ford Motor Co. v. Hoffman*, 345 U.S. 330, 338 (1953). In *Teamsters Local 692. (Great Western Unifreight System)*, 209 NLRB 446, 448 (1974), the Board observed that not every union's negligent action by itself will constitute a breach of the duty of fair representation: ''Something more is required.'' Ibid.

With these legal principles in mind, the Union's actions toward Davis will be considered.

C. *The Events Leading to the Confrontation of April 1991 and That Confrontation*

Davis normally works a day shift, from 7:30 a.m. to 4:00 p.m. In December 1990, he was working over 40 hours per week, regularly receiving some overtime work. He testified that during December, Union Steward Bedard approached him and inquired if Davis had worked 40 hours or more weekly for a 6-month period in the last 12 months. Bedard explained that under the Postal Agreement if a PTF works this many hours, the senior PTF can be promoted to a regular letter carrier position. In January, Davis met with Stewards Bedard and Corso to give them his pay slips so they might determine how many hours Davis had worked in the last year. Davis expressed his concern that his hours might be cut by this investigation that Bedard was conducting. Corso told him that management could not cut his hours for this reason. As a result of the check into Davis' hours, the Union filed a grievance seeking to have the senior PTF promoted to regular status. Although Bedard lead Davis to believe that such would not happen, Davis' name is prominently noted on the grievance.

Beginning at the end of January, after the filing of the grievance, Davis found that he was receiving overtime assignments only for emergencies and not on a regular basis as before. He complained to Corso about the cut in his hours, and was told by Corso that management could not keep doing it as they needed Davis. Nonetheless, his hours continued to be cut. In April, Davis was working in a hold down position in the Wethersfield station. He approached a supervisor in station A and asked if he could work in that station on Tuesdays, a normal off day for him in his hold down position. This station was backed up and the supervisor indicated that he could use Davis, if Davis' supervisor would allow it. This conversation took place on Monday, April 22. Davis went to his then supervisor, Val Farley, who told him he could not work in the other station. Davis inquired why Farley was denying his request and she said, ''Because of your involvement with those guys,'' indicating the Union stewards. Farley also indicated that she had been instructed by higher management to keep Davis' hours down, mentioning that Davis's name was on a class action grievance filed with the Employer by the Union. According to Davis, Farley said that the only way management could get back at the Union was through the PTFs.[3]

Davis testified that he told Farley that this was not fair, that he only provided the Union with information about his hours to help a fellow PTF get promoted to a regular position and his action had nothing to do with the Union. According to Davis, Farley believed him and changed her mind about his request to work in the other station on his off day, granting the request without checking with other management. Thus the next day, a Tuesday, he worked in the other station, casing routes.

According to Davis, the source of his subsequent problems with the union leadership can be found in a conversation with Stewards Bedard and Corso which took place on this day. He saw Bedard and Corso and approached them and told him of his meeting with Farley the day before. Davis testified that Corso had told him to report to him about his hours being down and for that reason had wanted to relate the Farley conversation to Corso. Davis testified that Corso's reaction to this news was, ''You should be lucky you're getting forty hours.'' Davis was upset because the Union had done nothing about the cut in his hours and mentioned to Bedard and Corso that he could do better on his own than with the Union as he had found Tuesday work in station A on his own. According to Davis, Corso told him that the Union had no problem with his Tuesday work in station A.[4] According to Davis, Bedard got upset and pointed to an article on the bulletin board that spoke about scabs, telling Davis that he would be a scab if he got out of the Union. Davis replied that he thought he would get out of the Union while he was a PTF and think about getting back in again when he became a regular mail carrier. Bedard mentioned a carrier by the name of John Onsager who had been out of the Union for 8 years and had been carried by the Union. He also threatened Davis that he could tell Davis' supervisor that Davis takes his breaks at the end of the day rather than when he is supposed to take them. Davis became really upset and told Bedard that he was going to get out of the Union and take care of himself. He then left the conversation.

Bedard and Corso remembered this meeting differently. Both also testified that this was not the first instance in which Davis had expressed his dissatisfaction with union

[3] Though Davis offered this evidence which would tend to support a finding of a violation of the Act by the employer, no such violation is alleged in the complaint. The matter was not thoroughly litigated, the employer was not on notice that it should defend itself in this regard and the matter appears time barred. Therefore, I will not make findings with respect to such a possible violation, but will consider the evidence in relation to the complaint allegations.

[4] This alleged statement by Corso was not mentioned by Davis in his affidavit given to the Board during the investigation of this case. On the other hand, neither Bedard nor Corso denied that this exchange took place during their testimony. Corso did deny generally being told by Davis about his station A work between January and April 1991. As the matter of knowledge of Davis's work in station A is important in this proceeding, I do not find that the two stewards' failure to deny the exchange is merely an oversight and credit Davis' testimony in this regard. Consequently, I find that both Corso and Bedard had knowledge of Davis' work in station A from the April 23 meeting.

representation of him and other PTFs.[5] Corso testified that he had talked with Davis since 1989 or 1990 about Davis's feelings that the Union did not properly represent PTFs and that they should not have to pay the same dues as regular full-time employees. He also testified that Davis had threatened to get out of the Union on a number of occasions prior to the spring of 1991.[6]

With regard to the April conversation, Corso testified that Davis was complaining about not getting fair representation from the Union. According to Corso, it was in this conversation that Davis mentioned that he had noticed a reduction in his hours and thought it was management retaliation for his participation in union activities. Corso testified that he told Davis that if Davis could show in any way that this was the case, the Union would file a grievance and an unfair labor practice charge. According to Corso, Davis was fearful of further retaliation and said he did not want to pursue it. Corso testified that in response to Davis's threat to get out of the Union, Bedard pointed to a nearby poster with a message about scabs, and told Davis, ''Mike, like I said in many of our conversations, ultimately you will be a regular and you will get all the benefits you claim you don't have now, and you know.''

Like Corso, Bedard testified that he had had a number of conversations with Davis over Davis's dissatisfaction with the Union's representation of PTFs. In the April conversation, Bedard testified that he took the union position that Davis should stay in and that the conversation was friendly. He did not remember speaking to Davis about breaks at this meeting. He does remember telling Davis on another occasion that when he was working as a router, he must take breaks because it puts pressure on every other employee if one of them works through breaks.

Though Bedard denies threatening to tell Davis's supervisor about Davis's apparent practice of not taking breaks at this meeting, he does acknowledge warning Davis that he must take breaks in accordance with approved practice.[7] I credit Davis assertion that Bedard did threaten him at the April 23 meeting, but I cannot find this threat violates the Act. It does not and could not threaten disciplinary action, and is consistent with the Union's position with respect to employees' taking breaks. Thus, I will recommend that this complaint allegation be dismissed.

The complaint also alleges that on April 23, Corso harassed Davis because of his threatened withdrawal from the Union. I cannot find any evidence to support this allegation and will recommend that it be dismissed.

With regard to the issue of Davis's threat to withdraw from union membership providing motivation for the Union's subsequent treatment of Davis, I do believe it played a part, though I believe that an equal part was a growing personal animosity between Steward Corso and Davis. All of the remaining adverse actions which were directed toward Davis originated with Corso. As I will find hereinafter, I believe that Corso abused his position of authority with the Union in his actions toward Davis. Whether he took such actions out of retaliation for Davis's threat to withdraw from the Union, or entirely personal reasons, or as I believe, a mixture of the two motivations, I believe his actions constitute unfair representation, and were irrelevant to any legitimate Union interest.

D. *Corso's Alleged Request that Management Discipline Davis*

After the April meeting, Davis' problems with Steward Corso began in earnest. In mid-May, Davis had a conversation with coworker Sylvie Gervais. Gervais told him that she had taken a jeep assigned to Steward Corso out on deliveries by mistake the day before. On her return, Corso had been angry about the mistake, but forgave her. Corso also commented that if it had been Davis who had taken his jeep, he would have ''gotten his ass.'' Gervais testified and corroborated Davis's testimony on this point. Corso did not deny the comment to Gervais, testifying that he thought it was Davis who had taken his jeep because he believed that Davis was trying to ''get his goat.''[8]

On May 17, on reporting to work, Davis was asked by his supervisor if he had drawn a happy face on a work assignment form, noting that Corso had shown him such a form and wanted to file a grievance because of the drawing. Davis admitted that he had drawn the happy face. Corso joined this conversation and asked if Davis had made the drawing and what was its meaning. Davis thought the whole thing was

[5] On this point, Davis admitted that the April 1991 meeting with Bedard and Corso was probably not the first time he had spoken to them about his desire to get out of the Union. He had placed an article in the Union's newsletter dated June/July 1990, which states:

> The Union would be smart to remind themselves of simple equality and simple respect. Same union. Same job. Same Union deduction. Same respect. I am a PTF and I belong to the Union. I pay the same dues a regular carrier pays. The regular carrier gets protection which is in the contract. The PTF gets a $12.00 deduction every pay period. Many regulars do understand the PTF's problems. They give some good advice, but only off the record. One of the problems is with seniority. Seniority is good. Seniority helps keep a supervisor honest. It keeps them from favoring one carrier over another. But this, seemingly, is only for regular carriers. This should also be for PTFs and should be in the contract, and not just left up in the air so a supervisor uses it when he or she feels like it. Another problem is respect. A new employee should start from the bottom, that's only fair. But respect should be given as they are still human beings. What is wrong with a supervisor letting a PTF know a day ahead of time if he or she has a collection, a long day, a short day? If this were done, the PTF could have some way to arrange their personal lives. Many times a supervisor knows what a PTF is working the next day, but doesn't tell the PTF because he doesn't have to. PTFs and Regular carriers are no different except for the way they are treated by the Post Office and the Union. PTFs need to respect the Union and the Union must respect us and get PTFs some rights.

[6] In an affidavit given during the investigation of this case, Corso admits the April 1991 conversation with Davis, but does not mention any other occasion that Davis threatened to get out of the Union.

[7] Bedard testified that he made reference to an arbitration decision which held that management has to make sure employees take their breaks. He also testified that he has shown this decision to other routers. Facility Superintendent Pilkington testified that it would not be a disciplinary offense for an employee to fail to take a break. Evidently, a grievance could be filed to force management to require an employee to take scheduled breaks.

[8] As will be discussed in more detail later, it is Corso's view that Davis became upset with him in the spring of 1991 because Corso complained to management about Davis' job performance. He believed that Davis was trying to retaliate against him or ''get his goat'' because of these complaints.

silly and said that the drawing was on the supervisor's copy of the form, not Corso's, and walked away.

A day or two later, Davis drew another happy face on another form in the presence of coworker John Onsager, commenting that the stewards were after him for this. His supervisor spoke to him about this, saying not to draw any more happy faces because Corso wanted to file grievances over it. Nothing more was said about these happy face incidents. Corso testified that he thought putting happy faces on official forms was inappropriate and that Davis was again doing it to get his goat. I do not believe Corso's complaint about Davis' drawings violates the Act. The forms on which Davis drew are official forms and are used in grievance proceedings. Corso could have had a legitimate concern about preserving the formality of the forms in his position as Union steward.

During this time frame, Davis regularly cased Corso's route. Toward the end of May, Corso complained to Davis' supervisor that Davis was not properly doing one of his duties, pulling so called markovers or address changes on Corso's route.[9] According to Davis, the supervisor, David Cattanach, asked Davis about this and after hearing Davis' explanation, agreed with Davis that he was doing his job properly. Cattanach testified that after Corso complained, he spoke to Davis and told him he had to do the markovers, and from that time forward has had no problem with Davis' performance in this regard.

Corso disagreed. He testified that he discussed the situation with Davis telling him that his route needed more time and attention. He also spoke to Superintendent Pilkington about the problem, telling Pilkington that though he had previously spoken to Davis and Cattanach about the situation, nothing had improved.

The matter of Corso's complaint to Pilkington came to Davis' attention a day or two after Cattanach spoke to him about it. Davis was in the middle of casing Corso's route when he was stopped by his supervisor, who told him to deliver some mail and finish casing Corso's route later. On the next day, Davis was told to see Superintendent Pilkington. Pilkington told Davis that Corso had complained that Davis had failed to pull markovers the previous day. Davis explained that he had been pulled off the job of casing Corso's route and that Corso had done it himself. Pilkington said he knew that Davis was a good worker and that Corso was just trying to get Davis written up.

Pilkington testified that after Corso complained to him about Davis' job performance, he checked into the matter and found that the problem was not Davis' fault. Prior to this incident, Corso had never before complained to Pilkington about an individual employee nor has he so complained since. He corroborated Davis' assertion that he told Davis that Corso was trying to get Davis written up.

The complaint alleges that on May 16 and 20, Corso requested the employer discipline Davis. I can find nothing in the evidence adduced, set forth above, to support this allegation. Though the evidence reflects a high degree of animosity toward Davis by Corso, it does not reflect that he asked that any disciplinary action be taken against Davis either over the happy face incidents or the alleged incidents of Davis' failure to properly route Corso's mail. Although Superintendent Pilkington told Davis that Corso was trying to get him written up, neither Pilkington nor Cattanach testified that Corso sought discipline against Davis. One of the reasons that I agree with the General Counsel that Davis' threatened withdrawal from the Union played a part in Corso's actions is the difference in Corso's responses to real or perceived problems with Davis before and after the April 23 meeting. Davis had begun routing Corso's mail in March and Corso testified that he had spoken to and worked with Davis about the manner in which he performed the job, indicating he was not satisfied with Davis' performance from the outset. It was only after the April 23 meeting that he began to go beyond Davis and complain to management about Davis' performance However, I do not find that the proof supports the Complaint allegations. Though management obviously considers Davis an outstanding employee, Corso's displeasure with his job performance seemed genuine. Corso had a past history of complaining about his route, seeking to have it designated as a ''problem'' route, and complaining about the lack of adequate support to handle the route. His complaints about Davis's performance are entirely consistent with his past actions in this regard, except for the more personal nature of the complaints, which, as I have said, support the General Counsel's theory of motivation.

As Corso's complaints about Davis in regard to Davis' job performance are consistent with Corso's past complaints about the support he received on his route, and as he did not ask or request that Davis be disciplined for his alleged lack of performance, I will recommend that this complaint allegation be dismissed.

E. *Corso's Threat to Take Away Davis' Overtime Work and Cronin's Request of Management that it Cease Providing Overtime Work to Davis in Station A*

On May 27 or 28, Davis was casing Corso's route, which on this day included delivering a sample of Cheerios cereal to each residence on the route. As the sample cereal box would not fit in each of Corso's case slots, Davis wrote on a slip of paper the addresses that were to receive the sample. On the bottom of this slip, he wrote and underlined the words, ''Cheerios, Cheerios, Cheerios.'' Corso approached Davis later in the day, waving a piece of paper at Davis, saying ''What's the meaning of this?'' Davis said it was a list of the names and addresses of the persons who were to get the Cheerios. Corso yelled, ''What's this? Cheerios, Cheerios, Cheerios. You just want to aggravate me.'' Corso continued, ''I wasn't going to do anything before, but because of these Cheerios, Cheerios, Cheerios, I'm going to put an end to your overtime on Tuesdays.''

This outburst was overheard by Davis' coworker Paul Serrano, who asked Davis what the yelling was about and was Corso going to put an end to Davis' Tuesday overtime? Serrano testified that he heard Corso yelling out real loud, saying Cheerios, Cheerios, Cheerios. He could not make out all of what Corso was saying, but did hear him say that he was going to make sure that Davis doesn't go to station A and work on his comp day. Serrano later asked Davis why

[9] Corso considers his route a ''problem'' route because it contains a number of apartment complexes that experience a high turnover in residents and, accordingly, a high change of address rate. Davis became the router on Corso's route in mid-March 1991. Prior to this time, Corso was also having problems with the people performing this job and, in February 1991, had filed a formal grievance over the problem. The grievance was sustained.

Corso was mad, and Davis said it was because he wrote Cheerios on the routing slip.

Corso testified that he does not like to deliver samples and thought that by underlining the word ''Cheerios,'' that Davis was again trying to get his goat. As noted earlier, Corso denies being told by Davis in April that Davis was working in station A on his day off. He testified that he first learned of the situation from a regular employee, Mike Calabro, on the day of the Cheerios incident. He claims that he was on his way to tell Davis that he was going to have Station A Steward Cronin investigate the matter when he saw the Cheerios note. He went to Davis and spoke first to him about the Cheerios matter, asking Davis if he was trying to get his goat. He testified that Davis just shrugged his shoulders. Corso said ''fine,'' and walked away. Then he remembered the station A work and returned to Davis, telling him, ''By the way, I just want you to know that I'm going to Station A. I'm speaking to Tom Cronin, to ask him to do an investigation, to see if anybody is working there, any PTFs, or anybody is working there in an overtime status from Wethersfield.'' He said he did this as a courtesy. He denies yelling at Davis, but admits being a bit agitated.

I credit Davis' version of this conversation over that given by Corso to the extent that they differ. I have heretofore found that Corso had knowledge of Davis's overtime work in station A since the April 23 meeting, so I discredit his testimony about discovering this fact from employee Mike Calabro. Calabro was not called to testify.

Corso testified that he then went to Station A Steward Cronin and told him that he had learned that Davis was working in station A on Tuesdays, and asked Cronin to check to see if his overtime list was maximized. He denies speaking to management about the situation. He claims there was a management union agreement made in April that management would not use employees in from one station in another station unless the employees' overtime list in the affected station had been utilized to the maximum degree.

Davis learned that he was being taken off the Tuesday work from Pilkington. Pilkington told Davis that another steward, Tom Cronin had told him that he wanted Davis to stop working on station A on Tuesdays because Davis had a hold-down job in the Wethersfield station. Cronin said the Union would file a grievance over this situation. Pilkington told Davis he did not know what to do because of the peculiar situation with three separate stations in one facility, and said that for the time being, he was going to stop the Tuesday work.

Davis went to the NLRB to file a charge over this incident and shortly thereafter had another conversation with Pilkington wherein Pilkington repeated that Cronin had threatened to file a grievance over Davis' Tuesday work in station A. At this point, Davis had been working Tuesdays in station A for about a month. He was not allowed to work in station A for the next four or five Tuesdays although he was available to work those days. After this period, his job assignment in the Wethersfield station changed and he was assigned regular work on Tuesdays.

I find that Corso, because of his previously discussed animosity toward Davis, caused Cronin to demand that management stop Davis' station A overtime work causing the employer to discriminate against Davis in violation of Section 8(a)(3) of the Act.[10] I further find that Cronin acted on Corso's request for no legitimate union reason. The Respondent Union asserts that its request that Davis's overtime work in station A be stopped is consistent with its position about use of carriers in stations other than the ones to which they are assigned unless the overtime lists in the affected station have been maximized. The overtime list in station A had not been maximized during the time that Davis was working Tuesdays in that station. I do not find this to be a valid position because of the timing of the Corso—Cronin request that Davis be taken off the station A work and because of Davis' status as a PTF as opposed to regular carrier status.

I believe it is clear that the Union has consistently taken the position that a regular full-time employee cannot be used to perform work in a station other than the one to which he is assigned unless the employees assigned to the other station have had the opportunity to perform the work as overtime. This position has contractual support. However, the situation with respect to PTFs does not seem to be the same.

Union President Willadsen testified that the Union has had a longstanding agreement with management that before they attempted to shift PTF employees from one station to another, they would make every attempt to maximize the overtime desired list which exists in that station. The agreement also contemplated that management would first notify the Union if they found it necessary to shift PTFs.

According to Willadsen, Murphy Road management, including Pilkington, met with the Union in April 1991 and agreed that management would not continue to utilize PTFs across station lines until management had attempted to maximize the overtime desired list to its fullest in the station affected. Union Vice President Vernon Tyler offered similar testimony. However there is no written record of this alleged agreement insofar as it relates to PTFs and such an agreement appears to me to be contrary to all written provisions regarding PTFs in this record.

Pilkington testified that this meeting involved the use of regular carriers from other stations to work in station A. This practice had been the subject of a number of grievances filed by the Union. However, Pilkington testified that there were no restrictions on the use of PTFs in this regard, even those in hold-down positions, in the contract or any other agreement between the Postal Service and the Union. He testified that he took Davis off the station A work for a period of time while he made sure of his legal position on this point. Pilkington's version of the agreement comports with all of

[10] Though the complaint in its conclusionary paragraphs alleges an 8(a)(3) violation by the Employer, it does not seek to hold the Employer responsible for the losses Davis suffered by virtue of being taken off the Tuesday overtime work. I can find no evidence of discriminatory motivation on the part of the Employer and see no useful purpose in making it jointly liable for Davis' losses. Moreover, Pilkington had been in his postion as superintendent only about 2 months at the time of this incident and was not sure of his legal stance in the face of the Union's threats to file grievances over Davis' overtime. On the other hand, the Employer's acquiesence in the Union's demand would have the foreseeable effect of intimidating not only Davis, but other employees as well, and thus have the foreseeable effect of encouraging membership in the Union and currying favor from its officials.

the written pronouncements regarding PTFs in the record which predated the current controversy.[11]

Written documentation issued by the Union to support the position of management in this regard. A Newsletter issued by the Union's president (Jt. Exh. 2) states:

> There are two overtime desired lists; the Own Work Assignment List and the Overtime Desired List itself. The Own Work Assignment List entitles a carrier to work overtime only on the workdays that he or she is normally scheduled to work. Being listed on the Own Work Assignment List does not entitle the carrier to come in on his or her non-scheduled day and any overtime worked because of the application of the Own Work Assignment List is not listed for purposes of overtime distribution equitability.
>
> The Overtime Desired List entitles a carrier considered for a call-in on his or her non-scheduled day. All overtime worked as a result of effecting the Overtime Desired List is recorded and is subject to equitability considerations at the end of the quarter. A carrier having listed themselves on the Overtime Desired List must be available to work overtime on any given day up to 12 hours. *The Overtime Desired List applies only to full-time regulars, not PTF employees*. [Emphasis added.]
>
> Important Things to Remember
>
> If you are listed on either overtime list and on a certain day you are not able to work late, you must notify your supervisor immediately upon clocking in for consideration.
>
> Despite widespread beliefs, management is under no obligation to assign overtime on a seniority or rotating basis.
>
> *PTF's can be used in lieu of full-time regulars to work any overtime anytime: even if the overtime occurs on a carrier's own assignment and he or she is listed on the Own Time Work Assignment List*. [Emphasis added.]

A joint statement on overtime (Jt. Exh. 3) states, inter alia:

> *The Overtime Desired Lists control the distribution of overtime only among full-time regular letter carriers. Management may assign overtime to a PTFS or casual employees rather than to full-time regular employees who are either signed up for ''work assignment'' overtime or OTDL*. [Emphasis added.]

At a PTF meeting conducted by Union President Willadsen in June shortly after Davis went to work at the facility, Willadsen told the PTF's that management would be stupid not to use PTFs for overtime before using regular employees because it was cheaper.

As the Union's own written documentation does not support its position with respect to Davis' work in station A, I do not find that its arguments in this regard are valid and instead are pretextual, designed solely for the purposes of this hearing. Moreover, as the timing of the demand to remove Davis from the station A work came almost a month after grievances were filed over regular employees from other stations working in station A, yet immediately after the Cheerios incident, I find that the request was motivated by Corso's animosity and no other reason. As Corso's request, and Cronin's followup to that request serve no legitimate purpose, but to the contrary, appear entirely irrelevant to any legitimate purpose the Union might have, I find that through their actions as agents of the Union, the Union violated Section 8(b)(1)(A) and (2) of the Act. See *Postal Service*, 240 NLRB 1198 (1979).

CONCLUSIONS OF LAW

1. The United States Postal Service is an employer subject to the Board's jurisdiction pursuant to Section 1209 of the Postal Reorganization Act.

2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening a bargaining unit employee with loss of overtime work and requesting the employer to take away that employee's overtime work, the Respondent Union has breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act.

4. By causing the Employer to take away a bargaining unit employee's overtime work by threatening to file meritless grievances, the Respondent Union has violated Section 8(b)(2) of the Act.

5. The Respondent did not otherwise violate the Act as alleged in the complaint.

THE REMEDY

Having found that the Respondent Union has engaged in activity in violation of Section 8(b)(1)(A) and (2) of the Act, I recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Respondent Union has unlawfully caused the Employer to remove employee Michael Davis from certain overtime work, I recommend that the Respondent be ordered to make Davis whole for any losses he may have suffered by virtue of Respondent's unlawful actions. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest computed as set forth in *New Horizons for the Retarded*, 283 NLRB 1173

[11] Both Davis and his supervisor, Cattanach, testified that both before the events here involved and after them, Davis has been assigned work outside the Wethersfield station. No grievances were introduced to reflect that the Union objected to this practice. Moreover, the Union held the meeting with Pilkington at a time when Davis was already working in station A and grievances were filed at this time about regular employees from other stations working in station A. See U. Exh. 8. and 9. Surely, Cronin, the station A steward, would have been aware of the situation, yet nothing was done about it until the Cheerios incident, and Corso's angry request of Cronin that Davis be removed from the station A work. Strangely, Steward Cronin did not testify in this proceeding. Thus no reason is given for his waiting more than a month to complain about Davis' work in his station. Equally strange, if one believes the Union's defense, is the fact that no grievance was filed by the Union to force the Employer to make whole the station A employees for the hours that Davis did work in station A, nor was any grievance filed over the failure of management to give notice of Davis' assigned work in stations other than Whethersfield.

(1987). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[Recommended Order omitted from publication.]